

**DC Vendors United Comments on the Proposed Rulemaking on Vendors and  
Solicitors  
July 20, 2010**

**General Comments**

We submit the following comments in response to the publication of Notice of Proposed Rule Making, District of Columbia Register, Vol. 57, No. 26, June 25, 2010

**Section 502 General License Requirements**

**Section 502.3 (b)**

Farmers & flea market vendors should not be exempted from licensing requirements. Many of these individuals work on public space on a daily basis. Some displace sole proprietor vendors. The provision here exempts "Persons selling agricultural goods or farm products of their own raising..." from licensing requirements. We do not believe there is any practical way to enforce such a provision because there is no practical way to verify that agricultural goods or farm products were, in fact, produced by the vendor. Under the regulations as proposed, all other vendors at a farmers' or fleas market, including persons selling agricultural goods or farm products *not* of their own raising, would have to obtain an appropriate license. To create a level playing field, all vendors should be required to obtain some type of license.

**Section 502.3 (e)**

There is no provision or procedure contained within these regulations providing for authorization to sell products at a licensed or permitted Special Event. If this provision is to remain, a description or procedure for obtaining "authorization" must be set forth.

**Section 503 Vending Business License: Classes of Licenses**

**Section 503.1 (b) Class B Licenses**

Vendors in possess of a Class B license should be allowed to sell non- hazardous, pre-packaged food items such as bottled water, soda, wrapped candy, etc.

**Section 503.3 (j)**

The provision prohibiting the sale of "offensive merchandise" is defectively vague and unenforceable. It is at worst a violation of First Amendment rights and at best a tool to oppress unpopular or anti-incumbent opinions.

**Section 504 Vending Business License: Application and Fees**

**Section 504.2 (j)**

"Additional information required by the "Director or...DOH Director" should be subject to this regulation review process before being added to license requirements.

### **Section 504.3 (c)**

Disqualification for a vending license should not be premised upon mere arrest or issuance of a citation but only upon conviction for the offense of vending without a license.

### **Section 507 Vending Business License: Denial, Suspension, Revocation and Seizure**

#### **Section 507.2**

This provision, granting the Director the power to summarily suspend a vending license without prior notice to the license holder, gives the Director too much unfettered authority. While we agree that the power to act summarily is necessary in limited circumstances, the circumstances in which that power is granted here is unwarranted. Specifically the power granted in Subsection 507.2 (a) pertaining to counterfeit merchandise assumes that the Director can determine that goods are counterfeit without showing proof or any reasonable basis that such is the case and without providing the vendor any opportunity to contest the Director's finding prior to suspension. In a less egregious manner, Subsection 507.2 (d) permits the Director to declare an activity or conditions a threat to health or safety without showing that the alleged threat is imminent and without allowing the vendor a reasonable attempt to correct any such condition. These powers must be retrained by offering an overlay of fairness and due process to the vendor whose business is in danger of being summarily taken.

### **Section 511 Vending Site Permit: Expiration and Renewal**

#### **Section 511.1**

We would propose that Vending Site Permit should be issued for a term coterminous with the vendors license.

**Section 513 Health Inspection Certificate: General**  
**Section 514 Health Inspection Certificate: Application**  
**Section 515 Health Inspection Certificate: Issuance**  
**Section 516 Health Inspection Certificate: Suspension**  
**Section 517 Food Protection Manager Certificate**

The foregoing Sections clearly are within the jurisdiction of the Department of Health and regulations pertaining thereto cannot be imposed by DCRA. Consequently, we have not raised our specific concerns pertaining thereto.

**Section 518 Propane and Open Flame Permit**  
**Section 520 Hood Suppression System Approval**

The foregoing Sections clearly are within the jurisdiction of FEMS and regulations pertaining thereto cannot be imposed by DCRA. Consequently, we have not raised our specific concerns pertaining thereto.

**Section 520 Vending Locations: General**

**Section 521 Vending Locations: Sidewalk Vending**

**Section 528 Vending Locations: Roadway Vending Locations: Additional Locations**

The foregoing Sections clearly are within the jurisdiction of the Department of Transportation and regulations pertaining thereto cannot be imposed by DCRA. Consequently, we have not raised our specific concerns pertaining thereto.

**Section 530 Assignment of Roadway Vending Locations**

This Section seems to describe a process at odds with the current practice. If this is to become a new method for assigning Roadway Vending Locations, the following changes would occur: Sites would be assigned for a week at a time rather than for single days of each week (Subsection 530.2 (b)) The vendor winning a site would have 35 days to pay any associated fees, well beyond the time frame for authorized use of the assigned location. (Subsection 530.4) The Director would actually assign registration numbers for participation in the lottery rather than having an interested third-party perform that task. (Subsection 530.6) A general weakness of this section is that it does not provide that the lottery be held in a timely fashion, i.e. in time for the winning vendors to gear up for supplying and setting up their businesses on the earliest assigned date. This has been a problem under current practices.

**Section 531 Public Markets**

**Section 531.4**

**Section 531.5**

These two subsections contain inconsistent language relating to license requirements of vendors at public markets. The former states that vendors "shall" be subject to licensing requirements and the latter uses the word "may" be subject to licensing requirements.

**Section 533 Design Standards**

The entire Subchapter D relating to design standards, operational standards and inspections is antiquated and attempts to micromanage vendors down to the material from which shade umbrellas are made to the amount of varnish on a vending stand (2, no more, no less). Even in its micromanagement, the regulations get it wrong, specifying umbrellas and canopies to be made of weather-resistant canvass, if for a vending cart or vending vehicle (Subsections 534.2 and 535.3 (a)) but either weather-resistant canvass or six ply polyurethane material if used for a vending stand (Subsection 536.1 (d)). Again, a vending stand must be covered by a skirt or table cloth which must extend from the table surface to within one inch of the sidewalk pavement (the factual basis for this

requirement, unfortunately, is not provided). (Section 536.1 (e)). The height of a vending vehicle may be ten (10) feet (Section 535.1 (c)) but the height of the umbrella or canopy used to cover the vehicle may not extend more than eight (8) feet from the ground (Section 535.3 (c)).

The issue here is the regulations impose strict standards on equipment without addressing function. The most minute detail is addressed, principally in a prohibitory clause, while the impact on vendors and vending is not addressed.

Design standards, if they are to be as detailed as those proposed, should arise from a fresh review of current usage and technology. The proposal, for the most part, is a simple rehash of standards developed decades ago. DCRA is missing a fresh opportunity to advance the art and business of vending by imposing design standards which are both nonsensical and detrimental to the success of vending as a viable industry in DC.

There is reason to question whether DCRA has even closely read the provisions of this proposal.

Section 535.2 purports to be a regulation pertaining to Vending Vehicles but makes reference to vending carts within the substantive part of the regulation.

This entire subchapter consists of arbitrary, restrictive and unreasonable provisions for which no basis is provided and for which no discernible purpose is served. This is made manifest by the fact that Sections 534 to 538 are not applicable to vending carts, vending stands and vending vehicles (even those vending food) operating at farmers' markets and other open markets on public or private space. (This exemption seems to be at odds with the licensing requirements for these vendors) Exempting one subclass of vendors from these burdensome and arbitrary provisions for no discernible reason illustrates once again the concern of the vending community that DCRA is exercising its power with an intent to harm rather than to enhance and encourage vending in the District of Columbia.

### **Section 537 Design Standards: Food Vending Carts and Vehicles**

This Section clearly is within the jurisdiction of the Department of Health and regulations pertaining thereto cannot be imposed by DCRA. . Consequently, we have not raised our specific concerns pertaining thereto.

### **Section 538 Design Standards: Advertising**

This section, in attempting to restrict a vendor's right to free expression, is in violation of the US Constitution, at least for its overreaching and its vagueness. Any restriction on free expression must have some overriding public purpose. Restrictions set forth here not only lack such purpose but are discriminatory and unreasonable.

As a further example of DCRA's arbitrary requirement, Section 538.4 prohibits handwritten signs and requires mechanically printed signs. We are uncertain that signs are still printed mechanically.

### **Section 547 Inspections: Food Preparation and Handling**

This Section clearly is within the jurisdiction of the Department of Health and regulations pertaining thereto cannot be imposed by DCRA. Consequently, we have not raised our specific concerns pertaining thereto.

### **Section 549 Inspections: Fire Safety**

This Section clearly is within the jurisdiction of FEMS and regulations pertaining thereto cannot be imposed by DCRA. Consequently, we have not raised our specific concerns pertaining thereto.

### **Section 554 Littering**

This unfairly imposes upon vendors responsibility for fulfilling a public function of removing paper, peelings and refuse of any kind from their assigned sites and all sidewalks, roadways and other public space adjoining and adjacent thereto. This clearly overextends their fundamental responsibility of keeping their site free of trash of all kinds and of providing trash receptacles for their customers. Requirements beyond that would subject vendors to involuntary servitude for the benefit of the DC government.

### **Section 557 Purchase or Receipt of Stock**

This section overreaches what may be a legitimate purpose. There is an interest in preventing traffic congestion caused by vendors restocking their businesses. However there is no justification for an absolute prohibition on restocking. Given the recognition that food vendors may require restocking and the general practice of commercial deliveries made by and to other commercial enterprises within both commercial and residential areas, any limitation on restocking should be based only upon public safety considerations. Unreasonably blocking traffic or access to public or commercial space, or whatever standard is applied to other deliveries in the area served by the vendor would be a valid reason to restrict restocking but an outright and absolute ban is discriminatory and a violation of equal protection which would be subject to challenge.

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**July 21, 2010**

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Dear Ms. Argo:

On behalf of DC Vendors United, I have attached our comments to the proposed vending regulations.

We appreciate the effort that was made to develop a comprehensive set of regulations and look forward to working with you as we continue to address some concerns over what we may see as weaknesses and/or deficiencies that detract from making the DC model the most successful one for vending businesses.

Sincerely,

John K Lunsford